



## **Board of Adjustment**

### **Special Study Session**

**DAY & DATE:** Wednesday, June 4, 2003  
**TIME:** 5:00 PM  
**LOCATION:** Kiva Conference Room  
3939 N. Drinkwater Boulevard, City Hall

Interested parties are invited to observe Study Sessions, although discussion is limited to the participation of Board Members and City staff. Public comment is reserved for the Regular Meeting.

#### **Roll Call**

#### **Discussion Items**

1. Discussion of item(s) on the June 4, 2003 Regular Agenda.
2. Discussion of staff report format.
3. Board update and discussion of changes to the City Zoning Ordinance.



## **Board of Adjustment**

### **Executive Session**

**DAY & DATE:** Wednesday, June 4, 2003  
**TIME:** 5:30 pm.  
**LOCATION:** Kiva Conference Room  
3939 N. Drinkwater Boulevard, City Hall

1. Note: Pursuant to A.R.S. § 38-431.03 (A) (3), the Board may meet for discussion and consultation with the City Attorney for legal advice in an Executive Session, regarding any of the items set forth on the Regular Meeting agenda. The Board may meet before, during or after the Regular Meeting on these items, or during or after a Special Study Session.

#### **Adjournment**



## **AGENDA**

### **Board of Adjustment REGULAR MEETING**

**DAY & DATE:** Wednesday, June 4, 2003  
**TIME:** 6:00 PM  
**LOCATION:** 3939 N Drinkwater Boulevard  
City Hall Kiva

#### **CALL TO ORDER**

#### **ROLL CALL**

#### **APPROVAL OF MINUTES**

1. May 7, 2003

#### **REGULAR AGENDA**

2. **5-BA-2003 (Waxman / Morrison Property Variance)** Request for a ruling to determine if this new proposal constitutes a Material Change from prior case 12-BA-2002 (per Board of Adjustment Rules of Procedure, Section IV. Powers and Duties., 403. Resubmittals). **Staff contact is Keith Niederer, 480-312-4211. Applicant contact is Marcia Morrison, 480-946-8346.**

#### **ADJOURNMENT**

The Board of Adjustment consists of:

James Vail, Chairman; Terry Kuhstoss, Vice Chairman; Jennifer Goralski, Carol Perica, Norman Sands, Neal Waldman, Laurel Walsh, Commissioners.



Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the City Clerk's Office at 480-312-2412. Requests should be made as early as possible to allow time to arrange accommodation.

**DRAFT**



**SCOTTSDALE BOARD OF ADJUSTMENT  
KIVA - CITY HALL  
3939 N. DRINKWATER BOULEVARD  
MAY 07, 2003  
MINUTES**

**PRESENT:** James Vail, Chair  
Terry Kuhstoss, Vice Chair  
Jennifer Goralski, Board member  
Carol Perica, Board member  
Norman Sands, Board member  
Neal Waldman, Board member  
Laurel Walsh, Board member

**STAFF:** Donna Bronski  
Kurt Jones  
Keith Niederer

**CALL TO ORDER**

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**MINUTES APPROVAL**

January 8, 2003

**BOARD MEMBER PERICA MADE A MOTION TO APPROVE THE JANUARY 8, 2003 MINUTES. SECOND BY BOARD MEMBER WALSH.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**CHAIR VAIL** stated on Good Friday, April 18<sup>th</sup> the City of Scottsdale suffered a loss. One of the staff members, John Arnhold, passed away suddenly. Chair Vail shared some of his memories and thoughts of working with Mr. Arnhold. He also shared comments made by others commemorating Mr. Arnhold's life.

**BOARD MEMBER WALSH** shared some of her memories in commemoration of Mr. Arnhold's life and service with the City.

**CHAIR VAIL** presented Wendy Springborn-Pitman with a plaque in appreciation for her service on the Board of Adjustment. Chair Vail stated Ms. Springborn-Pitman served on the Board from March '97 to February 2003.

### **REGULAR AGENDA**

**3-BA-2003 (Scott Property)**, Evans Kuhn & Associates Inc., applicant, Sherwin Scott, owner, an appeal of the Zoning Administrator's interpretation dated February 26, 2003 relative to the construction of a driveway on undeveloped properties zoned R1-190 ESL at 41114 and 41414 N. Brangus Road.

**CHAIR VAIL** explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment.

**MR. JONES** presented the case per the staff packet. He stated the request is to appeal the Zoning Administrator's decision of February 26, 2003 regarding the proposed construction of a driveway across Lot 10 for access to Lot 16 in the Carefree Ranch Homesteads Phase One subdivision without the presence of a main building on either lot. Mr. Jones reviewed the role of the Board. Mr. Jones addressed Board Member questions.

**VICE CHAIR KUHSTOSS** stated she went through the manual but couldn't find anything that specifically addressed driveways. She further stated she did find something that specifically defined buildings and ancillary buildings and driveways did not fall anywhere in there. She remarked she is at a loss of how they are interpreting ancillary buildings to be a driveway when it is not in the parameter of the code. Mr. Jones stated he thought the Zoning Administrator interpreted that the driveway and drainage structure involved was significant enough to be an accessory to whatever the allowed uses on the site. Vice Chair Kuhstoss remarked it does not speak to accessory uses it talks to accessory buildings or ancillary buildings it specifically uses the terminology building in 7.2 and so she is at a loss how we can turn a driveway into a building. She inquired if there was other authority that she could not find. Mr. Jones replied the interpretation is based on those two sections that are in their report.

**BOARD MEMBER PERICA** inquired if they could tell them what the intent of this driveway is. It states in the report it is for access and drainage. How would it benefit drainage? Mr. Jones stated that right now they could get to the lot with the existing driveway scar. The applicant came in with plans to develop or to create what is called a 100-year crossing of this wash to allow access to this lot in case there is a storm or

anything they could cross with water in the wash, and they have requested plans to build that drainage structure and that driveway. Board member Perica stated being that they do not have immediate plans for the main building or a building permit will this driveway that would be constructed now be used for the main building or do they even know where the main building will be. Mr. Jones stated that would be a good question for the applicant.

**BOARD MEMBER WALSH** inquired would the current Zoning Administrator have knowledge whether a previous Zoning Administrator had granted this benefit. Is there any method by which we would know that somebody else had a positive decision by the Zoning Administrator? Mr. Jones replied that without research he could not accurately answer that question. He noted this is the first case they have seen where someone wants to do a full driveway and drainage improvement without a main structure coming a long at the same time.

**CHAIR VAIL** requested information on the scar that exists.

**JOHN GRAY**, Evans Kuhn & Associates, stated they are the civil engineers and surveyors who are working for Sherwin Scott the owner of this property. He further stated Mr. Scott is out of the country. He provided information on the history of this site. He reported this property was purchased nine years ago. He further reported when Mr. Scott purchased this property things were not as strict with regard to development. He further reported Mr. Scott is very concerned about assuring access to his lot. He noted the neighboring property has changed hands several times over the period of time that Mr. Scott has owned the property. The first owner was willing to assist in the process, but the necessary easements were not obtained at that time. The subsequent owner was uncooperative. The current Owners of the neighboring property are willing to grant the necessary easement.

Mr. Gray noted that the scar in its existing condition was there before Mr. Scott owned the property. He further noted the intent is to have a driveway to a single family home. He stated that their goal is to secure access to Mr. Scott's property at this time.

Mr. Gray noted there are four important considerations that the Board looks at when they are considering granting a variance. One is whether or not it is a special conditions, and the topography rates as a special condition. By creating this driveway, it gives the owner access to his property the same rights as everyone else in that subdivision. He remarked what they are trying to do here is to remain sensitive to the ESL ordinance by following the existing scar. He concluded he would like to point out his is not an accessory building it is a driveway like you would have to any other lot.

**CHAIR VAIL** stated he had not received any public comment cards.

**BOARD MEMBER PERICA** inquired if the main purpose of the driveway is for access. She noted that she read something about drainage. Mr. Gray stated there is a significant wash that runs along Brangus road so they are talking about installing a drainage culvert under the paved roadway for access.

**BOARD MEMBER WALSH** stated the parcel has exposure on the road this seems to be the lowest line and there is a scar there already for constructing a driveway. She inquired if this would be the least expensive access from an engineering standpoint. Mr. Gray replied it would be the least expensive because it is the most logical. Board member Walsh stated if the impetus of the applicant is to hypothetically guarantee their rights to develop a driveway access at this point, she wonders why the actual construction has to occur if they in fact had a recorded easement it would guarantee that right. She remarked that if the inherent reason is to have those easement rights it appears that could be done without action from the Board and gives the city a complete review at some point. She inquired if she was correct in that assumption. Mr. Gray stated he did not think Board member Walsh was incorrect. If the construction was not completed now, they had easements, and a new homeowner came along could they contest those easements without improvements being made, yes, they probable could but whether they would be successful they don't know.

Board member Walsh inquired if the applicant could buy that small piece of parcel and add it on to theirs. She stated she is just asking if action by the Board is the only way to guarantee that security. Mr. Gray stated they considered buying that property and the owners were willing to grant an easement but were not willing to sale.

**BOARD MEMBER GORALSKI** stated in the letter drafted by the applicant to the Zoning Administrator on January 15<sup>th</sup> states there are no plans to construct a residence on this property in the immediate future. She inquired if there was a time frame he was aware of. Mr. Gray replied he is not aware of a time frame. He noted the owner will eventually settle here.

**BOARD MEMBER SANDS** inquired if there was a time limit on the easement. Mr. Gray replied he did not believe so. Board member Sands inquired how they would lose it. Mr. Gray replied if the new owner contested the easement and has it abandoned.

**VICE CHAIR KUHSTOSS** stated there function is to determine whether this is an appropriate interpretation by the Zoning Administrator to do what he did and it seems like they are going outside of their authority. Ms. Bronski replied the Board's scope of analysis is whether they should uphold the Zoning Administrators decision.

**CHAIR VAIL** inquired if the owner was concerned about having a driveway going nowhere. He also inquired if that raises the possibility of people driving up to that location. Mr. Gray stated they have discussed that and determined it would probably be necessary to put a gate to keep people from going up there. Chair Vail inquired if to Mr. Gray's knowledge there is a reason that there is an urgency to do this with out plans being developed other than the remote possibility that the easement could be challenged if there is a new owner. Mr. Gray replied there is the possibility that the zoning ordinance could change and if they don't act on this now there is the possibility they would not be able to do it. It is very important to the owner to achieve this access the owner does not have sufficient access to his property.

**BOARD MEMBER WALSH** inquired if there has been a cost estimate made on the value of the culvert that accesses the driveway. Mr. Gray stated they have not done cost estimates but it would be easily upward of \$200,000. They would also be putting in the sewer and utility lines.

**BOARD MEMBER GORALSKI** inquired if there was a time frame for construction of the driveway. Mr. Gray stated they had attempted to start the permit process in October. They were hoping to have already started.

**BOARD MEMBER SANDS** stated this does not make sense for the City. They have these rules for a reason. He further stated for the Board to overrule the finding on the basis of what he heard today is going way too far. He noted he thought they should not set a precedent where somebody could come in later and ask for a little more.

**BOARD MEMBER GORALSKI** stated in reviewing both of the sections 5.011 and 7.200 she tends to agree with the Zoning Administrator's decision that this is a use that is incidental to the property and she would have trouble in overturning the decision.

**VICE CHAIR KUSTOSS** stated whether they think this is a good idea or not is not any of their business. Their business is whether the Zoning Administrator acted within the bounds of the law. He did not. He decided to create law that does not exist under the code. These people are not asking to do anything that is not allowed in the code. It was beyond his authority to make up law. There is no rules covering driveways. His decision was arbitrary and capricious and the existing law can't hold when an administrator does something illegal. Their function is to oversee this person and make sure they don't do things that are arbitrary and capricious and beyond their scope under the law. She remarked from a legal stand point her opinion is it was totally arbitrary and capricious on the part of the Administrator and they have no business talking to the wisdom or the lack of wisdom because that is beyond their authority.

**CHAIR VAIL** stated he cannot assume what the Zoning Administrator was thinking but he would think he felt that the driveway is in fact an accessory structure. A driveway is a structure it may not rise from the ground. He further stated he is troubled by having a driveway that goes no where and people in other subdivisions or other areas saying well the Zoning Administrator was wrong in calling a driveway a structure so now I'm going to build a driveway and park my car there and there are a myriad of things. He remarked he felt this is a structure. Is it an accessory to a building. There would not be a driveway needed if there was not a building that the driveway went to. He concluded he would vote to uphold the Zoning Administrator's decision.

**BOARD MEMBER WALSH** stated from some of her earlier questions she tends to agree with Chair Vail. She further stated that she would like to add that the key component on her part of saying is this a land improvement or an accessory structure one with the degree of construction and engineering that is necessary in addition there are very necessary code required components to build the building that are inherent in that culvert they are going to cross. She remarked she tends to believe the sewer lines, utilities lines make it more than just a bridge and do make it a structure in nature. She concluded she felt the Zoning Administrator was correct in his interpretation.



**BOARD MEMBER PERICA** stated she would vote to uphold the Zoning Administrator's decision because she sees this as an accessory use to the main use, which is a residential structure that is not there and not even proposed to be there in the immediate future.

**BOARD MEMBER WALDMAN** stated after having driven out there he thought it is actually needed and thought it was a stretch calling it an accessory structure. It is almost primary to the lot to be able to get to it. He further stated he does not see it as a detriment to the City of Scottsdale or a detriment to the neighborhood. In fact, if this were to be built it probably would help keep down the dust on the construction site for the building when it will be built. He reiterated he felt it was a stretch to call it an accessory building. He concluded he would vote to overturn the decision of the Zoning Administrator.

**VICE CHAIR KUHSTOSS MOVED THAT THE BOARD OVERTURN THE DECISION OF THE ZONING ADMINISTRATOR AS IT IS ARBITRARY AND CAPRICIOUS. SECOND BY BOARD MEMBER WALDMAN.**

**THE MOTION FAILED BY A VOTE OF TWO (2) TO FIVE (5) WITH CHAIR VAIL, BOARD MEMBER WALSH, BOARD MEMBER PERICA, BOARD MEMBER GORALSKI, AND BOARD MEMBER SANDS DISSENTING.**

**CHAIR VAIL** inquired if the Board would need a motion to uphold the Zoning Administrator's decision. Ms. Bronski replied in the negative.

**CHAIR VAIL** advised the applicant that they could appeal the Board's decision to the Maricopa County Superior Court.

## **ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 6:50 p.m.

Respectfully submitted,

"For the Record" Court Reporters



"Most Livable City"  
U.S. Conference of Mayors

## City Of Scottsdale

### Planning and Development Services

7447 E. Indian School RD.  
Scottsdale, AZ 85251

June 4, 2003

TO: Members of the Scottsdale Board of Adjustment  
FROM: Keith Niederer, Planner

RE: Resubmittal of case 12-BA-2003

Dear Members of the Board of Adjustment,

Planning and Development Services has received a resubmittal of variance application 12-BA-2002, that was denied by a vote of 4 to 3 at the January 8, 2003 Board of Adjustment hearing. Attached is a copy of that case.

According to part 403 of the Rules of Procedure for the Board of Adjustment, no adjustment that has been denied shall be further considered by the filing of a new application for one year unless the new application indicates a material change in the nature of the case. If a material change is claimed by the applicant, the Board shall first hear the applicant on the issue of materiality of said change before allowing the Secretary of the Board to post the required notices for a hearing on the merits of the case. No application concerning matters under consideration of the Board shall be accepted.

In this case, the applicant is claiming that a material change was made to the application. After the Board of Adjustment denied this case on January 8, 2003, the applicant, along with five other properties along the east side of 64<sup>th</sup> Street, submitted an application to abandon excess right-of-way on the east side of 64<sup>th</sup> Street from the City of Phoenix. On March 26, 2003, the City of Phoenix Abandonment Hearing Officer approved a ten-foot right-of-way abandonment subject to eight stipulations. The City of Phoenix also notes that the abandonment request will not be completed until all stipulations have been met and the request is formally adopted by City Council. As of the writing of this memorandum, the Phoenix City Council has not voted on officially approving the abandonment and it will not be placed on a City Council agenda until the City of Phoenix drafts a legal description of the area being abandoned. A copy of the results of abandonment hearing and accompanying stipulations is attached to this memorandum.

This item is before you today for two reasons.

- Is the new request considered a material change? The applicant has not altered the floor plan that was presented to the Board on January 8, 2003, but has altered the site plan after receiving an abandonment of ten feet of right-of-way from the City of Phoenix Abandonment Hearing Officer. This abandonment gives the property owner 10 additional feet of property on the western side. This changes the variance request from a front yard setback of 8 feet in lieu of the required 30 feet, to 18 feet in lieu of the required 30 feet.

- Timing. Would the applicant have to wait for final Phoenix City Council approval on the right-of-way abandonment? Or, could the Board of Adjustment act on the case with just the Phoenix Abandonment Hearing Officer approval?

If the Board of Adjustment decides that this is a material change and consents to hearing the case prior to Phoenix city Council approval of the 64<sup>th</sup> Street right-of-way abandonment, staff will place the item on the next possible Board of Adjustment agenda.

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Keith Niederer – Planner  
480-312-4211

**ATTACHMENTS:** Application  
Justification  
Project Narrative  
#1- Result of the City of Phoenix Abandonment Hearing of  
March 26, 2003.  
#2- 12-BA-2002 Staff Report and Attachments  
#3- Board of Adjustment Minutes from 1/8/2003  
#4- Revised Applicants Driving Tour  
#5- Revised Site Plan  
#6- Rules of Procedure for the Board of Adjustment

## **5-BA-2003**

Waxman / Morrison Property Variance

Attachments to this staff report are on file at the City of Scottsdale Current Planning office, 7447 E Indian School Road, Suite 105.

Please also refer to the  
[Applicant Submitted Documents](#)  
on the Case Fact Sheet for this application,  
found at:

<http://eservices.scottsdaleaz.gov/planning/casesheet.asp?caseid=25271>.

revocations of conditional Use Permits, and to hear and decide such other matters as the City Council shall, by ordinance, delegate to the Board.

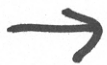
The Board shall be presumed to have jurisdiction over any application before it unless challenged by any person, including a Board member, opponents of the applicant, or any member of the City staff. Such challenge must be based on applicable provisions of the State law, City ordinances or these Rules. The Board shall hear arguments and vote the question when a challenge is raised.

402. Submission of Evidence and Written Material

Documentary evidence or written material supporting the grant or denial of an adjustment, or relevant to any matter the Board is authorized to hear and decide, shall be submitted with fifteen (15) copies at least eight (8) calendar days prior to the public meeting (including holidays), or it will be rejected. Evidence and written material shall be submitted by interested parties to the Planning Department and not directly to board members. An applicant shall supply an opposing party with a copy of the same material in the same time frame. Any evidence or written material not submitted at least eight (8) calendar days in advance of the public meeting may be addressed, but no handouts to the Board will be accepted at the public meeting as part of the applicant's presentation or as public testimony, whichever is applicable. Strict adherence to judicial rules of evidence is not required.

The Chair of the Board shall have the power to administer oaths and to take evidence in accordance with ARS 9-462.06 (B). The oath to be so administered shall be substantially as follows:

I, \_\_\_\_\_, do solemnly swear or affirm  
to tell the truth, the whole truth, and nothing but the truth.



403. Resubmittals

No adjustment that has been denied shall be further considered by the filing of a new application for one year unless the new application indicates a material change in the nature of the case. If a material change is claimed by the applicant, the Board shall first hear the applicant on the issue of materiality of said change before allowing the Secretary of the Board to post the required notices for a hearing on the merits of the case. No application concerning matters under consideration of the Board shall be accepted.